

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ALFONSO M. MEJIA,)	Case No. SACV 12-1682-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant. ¹)	

Plaintiff Alfonso M. Mejia ("Plaintiff") seeks judicial review of the Commissioner's final decision denying his applications for disability insurance benefits ("DIB") and supplemental security income ("SSI") pursuant to Titles II and XVI of the Social Security Act. For the reasons stated below, the Commissioner's decision is remanded for further proceedings.

¹ The Acting Commissioner is hereby substituted as the defendant pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. No further action is needed to continue this case by reason of the last sentence of 42 U.S.C. § 405(g).

1 **I. Factual and Procedural Background**

2 Plaintiff was born on August 15, 1968. (Administrative Record
3 ("AR") at 34, 145). He has a limited education and past work experience
4 as a dishwasher. (AR at 34).

5 On May 22, 2007, Plaintiff filed an application for DIB, alleging
6 that he has been disabled since May 11, 2007. (AR at 145-52). On January
7 29, 2008, Plaintiff filed an application for SSI, alleging an onset of
8 disability date of August 19, 2007.² (AR at 153-59). Plaintiff claimed
9 that the following conditions limited his ability to work: back
10 problems, diabetes, depression, arthritis, bipolar disorder, severe mood
11 swings, panic attacks, and anxiety attacks. (AR at 202, 217, 243). The
12 Social Security Administration denied Plaintiff's applications. (AR at
13 121-24, 126-35).

14 An administrative hearing was held before Administrative Law Judge
15 Milan M. Dostal ("the ALJ") on February 17, 2011. (AR at 79-107).
16 Plaintiff was represented by counsel at the hearing, and testified in
17 his own behalf. (AR at 79-107). In a written decision dated March 11,
18 2011, the ALJ found that Plaintiff: had not engaged in substantial
19 gainful activity since his alleged onset date of disability (step one);
20 suffered from the severe impairments of disorder of the lumbar spine and
21 asthma (step two); (3) did not have any impairments that met or equaled
22 the criteria of a listed impairment (step 3); (4) had a residual
23 functional capacity ("RFC") to perform the full range of work at all
24 exertional levels, except work involving exposure to dust, fumes, and
25 smoke, and was able to perform his past relevant work as a dishwasher
26

27 ² On September 22, 2009, Plaintiff filed a second set of
28 applications for DIB and SSI. (AR at 168-78). Plaintiff alleged an onset
of disability date of August 19, 2007. (AR at 168, 175).

1 (step 4); and (5) was able to perform other work that exists in
2 significant numbers in the economy, including work as a hand packager
3 and small products assembler. (AR at 22-35). Therefore, the ALJ
4 concluded that Plaintiff was not under a disability from August 19,
5 2007, through the date of the decision. (AR at 35).

6 On August 31, 2012, the Appeals Council denied review, and the
7 ALJ's decision became the final decision of the Commissioner. (AR at 1-
8 4).

9 Plaintiff commenced this action for judicial review on October 5,
10 2012. The parties filed a Joint Stipulation outlining the issues in
11 dispute on March 1, 2013. Plaintiff contends that the ALJ erred in
12 finding that Plaintiff's mental impairments are not severe, and by
13 failing to properly consider Plaintiff's limitations in lifting, bending
14 and stooping, as determined by an examining physician. (Joint
15 Stipulation at 4-12, 15-20). Plaintiff seeks remand for payment of
16 benefits or, in the alternative, remand for further proceedings. (Joint
17 Stipulation at 20). The Commissioner requests that the ALJ's decision be
18 affirmed. (Joint Stipulation at 21). The Joint Stipulation has been
19 taken under submission without oral argument.

20 21 **II. Standard of Review**

22 Under 42 U.S.C. § 405(g), a district court may review the
23 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
24 findings and decision should be upheld if they are free from legal error
25 and are supported by substantial evidence based on the record as a
26 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401
27 (1971); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
28 evidence means such evidence as a reasonable person might accept as

adequate to support a conclusion. *Richardson*, 402 U.S. at 401; *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less than a preponderance. *Lingenfelter*, 504 F.3d at 1035 (citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports a finding, the reviewing court "must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can reasonably support either affirming or reversing," the reviewing court "may not substitute its judgment" for that of the Commissioner. *Id.* at 720-721.

III. Discussion

A. Severe Mental Impairment

Plaintiff contends that the ALJ erred in failing to find his mental impairment severe at step two of the sequential evaluation process.

"An impairment or combination of impairments may be found 'not severe only if the evidence establishes a slight abnormality that has no more than a minimal effect on an individual's ability to work.'" See *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996)). If a finding of non-severity is not "clearly established by medical evidence," adjudication must continue through the sequential evaluation process. *Webb*, 433 F.3d at 687; see Social Security Ruling ("SSR") 85-28; SSR 96-3p.

Here, the medical evidence did not "clearly establish" a finding that Plaintiff's mental impairment was non-severe. The reports of two doctors, a non-examining physician and an examining psychologist,

1 identify significant functional limitations associated with Plaintiff's
2 mental impairments.

3 State agency medical consultant, Calmeze H. Dudley, M.D., completed
4 a psychiatric review technique form ("PRTF") and mental residual
5 functional capacity form ("MRFC") on behalf of Plaintiff in May 2008.
6 (AR at 753-65). Dr. Dudley determined that Plaintiff satisfied the
7 "paragraph A" diagnostic criteria of the PRTF for Listing 12.04
8 (Affective Disorders). (AR at 756); see 20 C.F.R., Part 4, Subpart P,
9 App. 1, 12.04. In assessing Plaintiff's functional restrictions under
10 the "paragraph B" criteria, Dr. Dudley indicated that Plaintiff suffers
11 from "moderate" difficulties in maintaining concentration, persistence,
12 or pace. (AR at 764); see 20 C.F.R., Part 4, Subpart P, App. 1. In the
13 MRFC, Dr. Dudley further found that Plaintiff had "moderate" limitations
14 in the ability to maintain attention and concentration for extended
15 periods, and "moderate" limitations in the ability to understand,
16 remember or carry out detailed instructions. (AR at 753).

17 Examining psychologist, Kathy Vandenburg, Ph.D., also determined
18 that Plaintiff had functional limitations as a result of his mental
19 disorder. Dr. Vandenburg administered a complete psychological
20 evaluation in February 2008. (AR at 653-58). Dr. Vandenburg diagnosed
21 Plaintiff with a learning disorder, NOS and polysubstance abuse, in
22 remission. (AR at 657). Plaintiff's test results and the clinical data
23 showed that Plaintiff's intellectual functioning was in the low average
24 range, and that his memory was in the low average range. (AR at 656-57).
25 Based on these findings and Plaintiff's learning disability, Dr.
26 Vandenburg concluded that Plaintiff had "marked" limitations in the
27 ability to complete complex tasks. (AR at 657-58).

28 //

1 Dr. Dudley's and Dr. Vandenburg's opinions establish that
2 Plaintiff's medically documented mental impairment had more than a
3 minimal effect on his ability to work, particularly with respect to
4 Plaintiff's ability to maintain concentration, persistence, or pace. See
5 *Webb*, 433 F.3d at 687. The ALJ, however, failed to cite any basis for
6 discounting these doctor's findings.

7 An ALJ is responsible for resolving conflicts in the medical
8 evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The
9 opinion of an examining physician, however, cannot be disregarded by the
10 ALJ without "specific and legitimate reasons . . . supported by
11 substantial evidence in the record." *Lester v. Chater*, 81 F.3d 821, 830
12 (9th Cir. 1996). State agency psychologists are treated as expert,
13 non-examining sources in disability proceedings. The ALJ may not ignore
14 these opinions and must explain the weight given. SSR 96-6p.

15 In the decision, the ALJ determined that Plaintiff's mental
16 impairments were not severe based on his assessment of Plaintiff's
17 limitations in the four broad functional areas described in "paragraph
18 B" of the PRTF: activities of daily living; social functioning;
19 concentration, persistence and pace; and episodes of decompensation. (AR
20 at 24-25); 20 C.F.R., Part 4, Subpart P, Appendix 1; see also 20 C.F.R.
21 § 404.1520a(c)(3). The ALJ found that Plaintiff had "mild" limitations
22 in the second and third functional areas and "no" limitations in the
23 first and fourth areas. (AR at 24). With respect to the finding that
24 Plaintiff had only a "mild" limitation in concentration, persistence,
25 and pace, the ALJ cited excerpts from Dr. Vandenburg's psychological
26 evaluation report. (AR at 24, 655). Specifically, the ALJ cited Dr.
27 Vandenburg's findings that Plaintiff was able to "focus on tasks,"
28 "needed little supervision to persist," and "was able to recall five

1 digits forward . . . [and] three digits backward." (AR at 24, 655).
2 Also, the ALJ noted that another examining physician, Dr. Duong, found
3 that Plaintiff had difficulty completing "serial 7's" correctly. (AR at
4 24, 860).

5 The ALJ erred in failing to provide reasons for discounting Dr.
6 Dudley's and Dr. Vandenburg's opinions. *Lester*, 81 F.3d at 831; see
7 also SSR 96-6p. Although the ALJ discussed some of Dr. Vandenburg's
8 findings in the decision, the ALJ provided no justification for
9 disregarding Dr. Vandenburg's finding that Plaintiff has "marked"
10 limitations in the ability to complete detailed tasks. The ALJ also
11 failed to explain why he rejected Dr. Dudley's finding that Plaintiff
12 has "moderate" limitations in the area of concentration, persistence, or
13 pace. Thus, the ALJ's step two determination is not supported by
14 substantial evidence.

15 16 **IV. Conclusion**

17 This case will be reversed and remanded so that the ALJ may further
18 evaluate the medical evidence and make appropriate findings. See *Bunnell*
19 *v. Barnhart*, 336 F.3d 1112, 1115-16 (9th Cir. 2003) (where there are
20 outstanding issues that must be resolved before a determination of
21 disability can be made, and it is not clear from the record that the ALJ
22 would be required to find the claimant disabled if all the evidence were
23 properly evaluated, remand is appropriate).³

24 //

25 //

26
27 ³ In light of this remand, the Court does not reach Plaintiff's
28 remaining arguments. See *Bunnell*, 336 F.3d at 1115-16. The Court
recommends, however, that the ALJ consider all of Plaintiff's arguments
when determining the merits of his case on remand.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that (1) the decision of the Commissioner is **REVERSED**; (2) Plaintiff's request for remand is **GRANTED**; and (3) this action is **REMANDED** for further proceedings consistent with this Memorandum Opinion.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment herein on all parties or their counsel.

DATED: March 19, 2013



MARC L. GOLDMAN
United States Magistrate Judge